

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PAMELA FOX KUHLKEN,

Plaintiff,

V.

COUNTY OF SAN DIEGO, SAN
DIEGO SHERIFFS DEPUTY D. SMITH
(Id # 1024) and DOES 1-5,

Defendants.

Case No.: 3:16-CV-2504-CAB-DHB

ORDER ON PLAINTIFF'S MOTION TO RETAX COSTS

[Doc. No. 45]

On January 16, 2018, the Court granted Defendants' motion for summary judgment [Doc. No. 32], and the Clerk of Court entered judgment in favor of Defendants [Doc. No. 33]. On January 30, 3018, Defendants filed a Bill of Costs totaling \$5,147.90 [Doc. No. 34], and a hearing was set for February 16, 2018 [Doc. No. 35]. On February 5, 2018, Plaintiff filed a notice of appeal to the Ninth Circuit [Doc. No. 36], but at no point did she file a response or opposition to the Bill of Costs. As a result of the lack of opposition from Plaintiff, the hearing was vacated, and on February 16, 2018, the Clerk of Court entered an order taxing costs of \$5,122.90. [Doc. No. 41.] The Clerk's order called attention to "Local Rule 54.1.h which provides in part that a motion to re-tax by any party, in accordance with Rule 54(d), FRCivP and Local Rule 7.1, shall be served and filed within seven (7) days

1 after receipt of the Order Taxing Costs, or unless within the seven (7) day period the court
2 permits the motion to be made orally.” [Id. at 2-3.]

3 The Ninth Circuit affirmed the Court’s grant of summary judgment and the mandate
4 was entered on April 12, 2019. [Doc. No. 42.] Now, two years after the order taxing costs
5 was entered, and nine months after Plaintiff lost her appeal, Plaintiff has filed a motion to
6 re-tax costs, on the grounds of financial hardship and because Plaintiff believes her case
7 involved issues of substantial public importance. The Court need not address the merits of
8 Plaintiff’s motion because, by failing to file her motion within seven days, Plaintiff waived
9 her right to challenge the cost award. *Walker v. California*, 200 F.3d 624, 626 (9th Cir.
10 1999) (“[W]e hold that a party may demand judicial review of a cost award only if such
11 party has filed a proper motion within the five-day^[1] period specified in Rule 54(d)(1).”).
12 Accordingly, Plaintiff’s motion to re-tax costs is **DENIED**.

13 It is **SO ORDERED**.

14 Dated: March 19, 2020

15 
16 Hon. Cathy Ann Bencivengo
17 United States District Judge

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¹ The period has since changed to seven days. See Fed. R. Civ. P. 54(d)(1).